No. 94-23

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

CITY OF EDMONDS,
Petitioner,
v.
WASHINGTON STATE BUILDING CODE COUNCIL, *et al.*,
and
UNITED STATES OF AMERICA,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS, COUNCIL OF STATE GOVERNMENTS, AND NATIONAL LEAGUE OF CITIES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether a municipal ordinance that limits to five the number of unrelated persons who may occupy a single-family zoned residence constitutes a "reasonable . . . restriction[] regarding the maximum number of occupants permitted to occupy a dwelling" under 42 U.S.C. § 3607(b)(1).

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INTEREST OF THE *AMICI CURIAE*

Amici, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local gov-

ernments. Land-use zoning is an important state function, which "has been specifically delegated to local governments by state legislatures through enabling acts in every state." Rutherford H. Platt, *Land Use Control: Geography, Law, and Public Policy* 178 (1991). Local governments' use of zoning to protect and enhance quality of life is longstanding and ubiquitous. "[L]and-use zoning is the most widespread local land-use control tool, in use in every major U.S. city (except the famous holdout, Houston, Texas) and many thousand smaller communities and counties." *Id.* at 166; *see* Martin A. Garrett, Jr., *Land Use Regulation* 3 (1987) ("By 1968, over 9,000 local governments exercised zoning powers, including 97 percent of all cities with over 5,000 population.").

As this Court has recognized, "[t]he power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities." *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 68 (1981). Zoning "may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that sometimes difficult to define concept of quality of life." *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13 (1974) (Marshall, J., dissenting).

One traditional use of zoning which has been recognized by the Court as legitimate is the zoning of areas for single-family residential use. *See, e.g., Belle Terre*, 416 U.S. at 8-9. The City of Edmonds, like many other municipalities, has made the reasonable legislative judgment that an occupancy limit on the number of unrelated persons permitted to reside in a single-family zoned residence is necessary to make the

single-family zoning designation meaningful. Such zoning choices fall squarely within the reasonable occupancy limitation exception to the Fair Housing Amendments Act, 42 U.S.C. § 3607(b)(1).

Amici also note that the City of Edmonds does not seek to exclude group homes for recovering drug addicts and alcoholics from the City. Group homes with up to five persons are permitted in single family zones, Pet. 8, and group homes are subject to no numerical limits in other parts of the City, where there is considerable rental housing stock available. *See id.* at 15.

Amici believe that the court of appeals erred in holding that the City of Edmonds' zoning ordinance is subject to invalidation under the substantive provisions of the Fair Housing Amendments Act. Because of the importance of this issue to *amici* and their members, *amici* submit this brief to assist the Court in its resolution of this case.[1]

SUMMARY OF ARGUMENT

The Edmonds ordinance, which sets a maximum occupancy limit for single-family zoned dwellings occupied by groups of unrelated persons, falls squarely within the Fair Housing Amendment Act's exemption for "reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1). Consequently, it is not to be scrutinized under the substantive provisions of the FHAA. The court of appeals' holding to the contrary conflicts with the

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[1] The parties have consented to the filing of this brief *amicus curiae*. Letters indicating their consent have been filed with the Clerk of the Court.

plain language of the statutory exemption, and finds no support in the legislative history.

1. As this Court has emphasized, "the starting point for interpreting a statute is the language of the statute itself." *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). The language of the FHAA exemption is clear and unambiguous: the terms of the FHAA have no applicability to any "reasonable" government restriction "regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1). By its terms, the exemption is triggered when two requirements are met: (1) the restriction in question must "regard[] the maximum number of occupants permitted to occupy a dwelling"; and, (2) the restriction must be "reasonable." The Edmonds zoning ordinance meets both of these requirements.

On its face, the Edmonds zoning ordinance is a restriction "regarding the maximum number of occupants permitted to occupy a dwelling," 42 U.S.C. § 3607(b)(1), since it sets an occupancy limit of five for all single-family zoned dwellings occupied by unrelated persons. The court of appeals and the United States attempt to avoid the exemption's obvious applicability to the Edmonds ordinance by reading additional limitations into the statutory language. But, contrary to their suggestions, nothing in the broad language of the statutory exemption limits its scope to occupancy limits calculated by reference to minimum square footage per person or indicates that a cap on the absolute number of persons permitted in a particular type of dwelling would fall outside the exemption. Nor does the statutory exemption exclude from its broad coverage occupancy limits, like the one at issue here, that exempt groups of related persons.

The Edmonds zoning ordinance is also "reasonable." As this Court has recognized, "[t]he power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities." *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 68 (1981). Moreover, single-family zoning has been identified by the Court as a legitimate exercise of that broad power. *See, e.g., Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974).

The Edmonds ordinance represents a reasonable legislative judgment as to the maximum number of unrelated persons that can feasibly reside in a dwelling in a single-family residential zone in a manner consistent with the goals and purposes of single-family zoning. Indeed, it provides more latitude to nontraditional "family" groups made up of unrelated persons than did the zoning ordinance upheld in *Belle Terre*, which permitted no more than two unrelated persons to share a single-family zoned dwelling. *See* 416 U.S. at 2. The fact that the occupancy limit applies only to unrelated persons does not make it unreasonable, especially given that the Court, in *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), indicated that zoning ordinances restricting the ability of related persons to reside together are constitutionally suspect.

Nor is there any question that the occupancy limit chosen—five persons—is reasonable. This limit far exceeds the size of the average household both nationally and within the City of Edmonds. *See* U.S. Bureau of the Census, *Statistical Abstract of the United States 1994* 59 (114th ed. 1994) (2.63 persons

per U.S. household in 1993); Pet. Br. 29 (2.41 persons per household in the City of Edmonds in 1990). The fact that the City could have chosen a different cut-off point does not diminish the reasonableness of its legislative judgment. *See Belle Terre*, 416 U.S. at 8.

2. Even if the Court finds it necessary to look beyond the statutory exemption's plain language to its legislative history, no different result obtains. Nothing in the legislative history indicates that Congress intended to exclude reasonable occupancy restrictions like the one at issue here from the statutory exemption. Instead, the legislative history suggests only an observation by the Committee that facially discriminatory measures, such as the law struck down in *Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), would remain impermissible notwithstanding the statutory exemption. *See* H.R. Rep. No. 711, 100th Cong., 2d Sess., *reprinted in* 1988 U.S.C.C.A.N. 2173, 2185, 2192. The legislative history certainly cannot be read to make the applicability of the exemption turn on whether the occupancy limit at issue meets the substantive requirements of the FHAA; such a reading would make the exemption meaningless.

ARGUMENT

I. THE EDMONDS ORDINANCE IS EXEMPT FROM THE SUBSTANTIVE STANDARDS OF THE FAIR HOUSING AMENDMENTS ACT UNDER THE PLAIN LANGUAGE OF 42 U.S.C. § 3607(b)(1)

The Fair Housing Amendments Act of 1988 ("FHAA"), Pub. L. No. 100-430, 102 Stat. 1619, makes it unlawful to discriminate against persons with disabilities in the rental or sale of a dwelling. *See* 42 U.S.C. § 3604(f)(2). Discrimination includes "a refusal to make reasonable accommodations" in rules and practices, where "such accommodations may be necessary to afford" persons with disabilities "equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Certain regulations, however, are exempt from the substantive standards of the FHAA. Under 42 U.S.C. § 3607(b)(1), for example, "[n]othing in this subchapter limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling."

The district court determined that the zoning ordinance of the City of Edmonds fell within the plain language of § 3607(b)(1) and granted summary judgment to the City. *See* Pet. App. 5a.[2] In reversing the district court and holding that the Edmonds zoning ordinance is subject to the substantive provisions of the FHAA, the court of appeals relied primarily on its interpretation of the legislative history and purposes of the FHAA rather than on the plain language of the statute. *See* Pet. App. 18a-25a. The

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[2] In referring to the Petition Appendix, *amici* use the same consecutive pagination system as the United States. *See* U.S. Br. in Opp. 2 n.1.

court of appeals' reliance on these legislative materials was inappropriate and unnecessary because, as the district court recognized, the plain language of § 3607(b)(1) clearly covers the zoning ordinance at issue here.

It is axiomatic that "the starting point for interpreting a statute is the language of the statute itself." *Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Moreover, where the language of a statute is clear and unambiguous, no further "interpretation" is necessary; a clearly phrased statutory directive means what it says. *See, e.g., Ratzlaf v. United States*, 114 S. Ct. 655, 662 (1994) (despite "contrary indications" in legislative history, "we do not resort to legislative history to cloud a statutory text that is clear"); *Morales v. Trans World Airlines, Inc.*, 112 S. Ct. 2031, 2038 n.2 (1992) ("Suffice it to say that legislative history need not confirm the details of changes in the law effected by statutory language before we will interpret that language according to its natural meaning."). *See also Barnhill v. Johnson*, 112 S. Ct. 1386, 1391 (1992) ("appeals to statutory history are well-taken only to resolve 'statutory ambiguity' ") (citation omitted).

Similarly, interpretations informed primarily by a court's sense of the broader purposes of a remedial statute (whether or not those purposes are expressed in the legislative history) are unsound if they ignore plain statutory language. The "purpose" of a complex piece of remedial legislation such as the FHAA is never a simple matter, and this Court has often recognized that the purpose of a statute is that which is expressed in its language:

> [T]he purpose of a statute includes not only what it sets out to change, but also what it resolves to leave alone. The best evidence of that purpose is the statutory text adopted by both Houses of Congress and submitted to the President. Where that contains a phrase that is unambiguous—that has a clearly accepted meaning in both legislative and judicial practice—we do not permit it to be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process.

West Virginia Hospitals, Inc. v. Casey, 499 U.S. 83, 98-99 (1991) (citations omitted). *See also Landgraf v. USI Film Products*, 114 S. Ct. 1483, 1508 (1994) ("Statutes are seldom crafted to pursue a single goal, and compromises necessary to their enactment may require adopting means other than those that would most effectively pursue the main goal.").

On its face, § 3607(b)(1) establishes only two requirements for its exemption to be triggered: (1) the restriction in question must "regard[] the maximum number of occupants permitted to occupy a dwelling"; and, (2) the restriction must be "reasonable." The language of the statute requires nothing more than these two elements; if a local, State, or Federal statute, regulation, or ordinance meets these requirements, its application is not limited by the FHAA.[3] The Edmonds zoning ordinance meets both of these requirements.

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[3] As discussed below in more detail, much of the court of appeals' analysis is based on the notion that Congress simply could not have meant to draft an exemption to the FHAA as broad as the plain language of § 3607(b)(1), and that therefore additional requirements must be read into the statute to make it more consistent with the purposes of the FHAA gen-

A. The Edmonds Ordinance Is A Restriction "Regarding The Maximum Number Of Occupants Permitted To Occupy A Dwelling"

The Edmonds ordinance is a restriction "regarding the maximum number of occupants permitted to occupy a dwelling." 42 U.S.C. § 3607(b)(1). It limits to five the number of individuals who can occupy a dwelling in the area of Edmonds zoned single-family residential, with an exception provided for families (*i.e.*, "persons related by genetics, adoption, or marriage"). *See* Edmonds Community Development Code ("ECDC") §§ 16.20.010, 21.30.010.[4] Because the ordinance limits the number of individuals who can occupy a dwelling (albeit with an exception for families), it is a restriction "regarding" maximum occupancy.

Nothing in the language of § 3607(b)(1) limits its force to particular types of restrictions on maximum

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erally and the court of appeals' reading of the legislative history. Such judicial revision of statutes is precisely what the plain language doctrine is designed to prevent.

[4] ECDC § 16.20.010 allows "single-family dwelling units" as the only permitted "primary use" in a single-family residential zone. ECDC § 21.30.010 provides that "[f]amily means an individual or two or more persons related by genetics, adoption or marriage, or a group of five or fewer persons who are not related by genetics, adoption, or marriage and none of whom are wards of the court unless such wards are related by genetics, adoption, or marriage to all other members of such group living together in a dwelling unit."

Thus, together the provisions stipulate that no more than five persons may occupy a dwelling unit in a single-family residential zone, unless those persons are related by genetics, adoption, or marriage.

occupancy. Indeed, the exemption itself emphasizes its breadth, inasmuch as it applies to "any" restriction regarding maximum occupancy, not merely to certain types of occupancy restrictions or to restrictions that calculate maximum occupancy by certain methods. The only limitation imposed by the statute on the types of occupancy restrictions that are exempt is that the restrictions be "reasonable."

In particular, there is nothing in the language of the statute to support the court of appeals' and the United States' proposed distinction between "use" and "occupancy" restrictions. *See* Pet. App. 17a-24a; U.S. Br. in Opp. 13-14, 14 n.9. Relying on this distinction, the court of appeals framed this case as a choice between a "broad" reading of § 3607(b)(1) that includes "use" restrictions and a "narrow" reading that includes only "occupancy" restrictions. Pet. App. 17a-18a n.3.[5] This choice is a false one. The language of the statute makes no distinction between restrictions that limit dwelling occupancy absolutely, by number of individuals per dwelling, and restrictions that regulate occupancy relatively, by number of individuals per square foot of living area; instead, § 3607(b)(1) exempts "any" restriction "regarding" the maximum number of persons "permitted to occupy a dwelling," without reference to the manner in which that number is calculated.

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[5] As an example of an "occupancy" restriction, the court of appeals cited § 503(b) of the Uniform Housing Code, which provides: "Every dwelling unit shall have at least one room which shall have not less than 120 square feet of floor area. Other habitable rooms, except kitchens, shall have an area of not less than 70 square feet. Where more than two persons occupy a room for sleeping purposes, the required floor area shall be increased at the rate of 50 square feet for each occupant in excess of two." *See* Pet. App. 20a-21a & n.4.

Nor is the Edmonds ordinance any less a restriction "regarding" maximum occupancy because it provides a specific exception for families. The plain language of § 3607(b)(1) exempts "any" restriction regarding maximum occupancy, not merely those that have no exceptions. Thus, aside from the question of whether a specific exception for families like that provided in the Edmonds ordinance is constitutionally required under this Court's decisions in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974), and *Moore v. City of East Cleveland*, 431 U.S. 494 (1977), the presence of an exception for families in the Edmonds occupancy ordinance does not vitiate its status as a restriction "regarding the maximum number of occupants permitted to occupy a dwelling."

Moreover, any limitation of the exemption to regulations that have universal application would effectively read the exemption out of the statute. The class of occupancy restrictions that have no exceptions under any circumstances would be small, if not nonexistent. Had Congress intended to limit the scope of § 3607(b)(1) to such a narrow category of occupancy restrictions, it would not have used the inherently broad term "any" in describing that category. *See United States v. Nordic Village, Inc.*, 112 S. Ct. 1011, 1015 (1992) ("statute must, if possible, be construed in such a fashion that every word has some operative effect").

B. The Edmonds Ordinance Is "Reasonable"

The Edmonds ordinance is also "reasonable" within the meaning of the statute. 42 U.S.C. § 3607(b)(1). It reflects a considered legislative judgment concerning the maximum number of unrelated persons that can feasibly reside in a dwelling in a single-family

residential zone in a manner consistent with the goals and purposes of single-family zoning.[6]

As this Court has recognized, "[t]he power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities." *Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 68 (1981). Single-family zoning is a longstanding and ubiquitous exercise of the police power. *See, e.g.*, Garrett, *Land Use Regulation* at 3; E.C. Yokley, 6 *Zoning Law and Practice* § 35-64, at 177-79 (4th ed. 1978 & Supp. 1994). The legitimacy of preserving zones for single-family residential purposes has long been recognized by this Court. *See, e.g., Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Belle Terre*, 416 U.S. 1.

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[6] To say that the City of Edmonds has made a reasonable legislative choice is not, of course, to say that its choice is the only reasonable choice that could have been made. Municipalities have adopted a wide variety of approaches to zoning issues, reflecting differing judgments as to the proper manner in which to balance relevant factors. For example, Houston, Texas (unlike every other major city in the country) has no zoning at all. *See* Platt, *Land Use Control* at 166. Moreover, municipalities may exercise choice in zoning matters only within the bounds set out by the State, from whom zoning power is delegated in the first instance. *Id.* at 178; *see, e.g.*, Wash. Rev. Code § 35A.63.100(2). Hence, state laws and constitutions may constrain the exercise of zoning authority by local governments. *Cf.* Wash. Rev. Code § 35A.63.240. In any case, zoning judgments are fundamentally legislative ones that are to be made by the State or by the local government to whom power has been delegated. *See Warth v. Seldin*, 422 U.S. 490, 508 n.18 (1975) ("[Z]oning laws and their provisions, long considered essential to effective urban planning, are peculiarly within the province of state and local legislative authorities.").

Permitting five unrelated persons to reside together in single-family zones, as the City of Edmonds has done, is plainly a reasonable legislative resolution of the community's desire to permit nontraditional "family" groups within single-family zones, while avoiding the density-related problems that could result from allowing unlimited numbers of unrelated persons to live within such zones. Many other jurisdictions have enacted similar occupancy limits within their single-family zones. *See Elliott v. City of Athens*, 960 F.2d 975, 980 & n.6 (11th Cir.), *cert. denied*, 113 S. Ct. 376 (1992); *see also* Pet. App. 24a. In *Belle Terre*, this Court upheld a single-family zoning ordinance which limited to two the number of unrelated persons who could live together, recognizing the legitimacy of a municipality's interest in preserving the residential character of single-family neighborhoods. In support of its holding, the *Belle Terre* Court observed:

> The regimes of boarding houses, fraternity houses, and the like present urban problems. More people occupy a given space; more cars rather continuously pass by; more cars are parked; noise travels with crowds.
>
> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. This goal is a permissible one within Berman v. Parker, [348 U.S. 26 (1954)]. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

416 U.S. at 9.[7] *See also Elliott*, 960 F.2d at 982 (upholding zoning ordinance permitting no more than four unrelated persons to reside together in single-family zone, noting the municipality's "substantial interests in controlling density, traffic and noise in its single family districts and in preserving the residential character of such districts"). Indeed, the Edmonds ordinance goes further in accommodating unrelated persons who wish to live together in a group than did the ordinance upheld in *Belle Terre*, which allowed no more than two unrelated persons to reside together in a single-family zone. *See* 416 U.S. at 2.

The fact that the occupancy requirement applies only to unrelated persons does not make it unreasonable, given the Court's indication in *Moore* that limiting the number of related persons who may live together would present grave constitutional difficulties. *See generally* 431 U.S. at 498-500; *see also Elliott*, 960 F.2d at 980-81; *Doe v. City of Butler*, 892 F.2d 315, 321 (3d Cir. 1989). The City could rationally conclude that permitting unlimited numbers of related persons to share housing in a single-family zone is consistent with the "single-family" use, while the use of similar housing by unlimited numbers of unrelated persons might be inconsistent with the single-family character of the zone. The reasonableness of the specific policy chosen by the City is highlighted by the fact that the number of unrelated persons permitted to live to-

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[7] Although *Belle Terre* involved a constitutional challenge, the same considerations should apply here in determining whether the Edmonds ordinance is "reasonable." Indeed, in the zoning context, "reasonableness" has often been equated with constitutionality. *See* Platt, *Land Use Control* at 200 (in zoning challenges, " '[r]easonableness' is . . . used as a surrogate for 'constitutionality' ").

gether, five, exceeds by a wide margin the size of the average household—both nationwide and in the City of Edmonds itself. In 1993, the average size of all American households was 2.63 persons, the average size of family households was 3.21 persons, and the average size of nonfamily households was just 1.24 persons. U.S. Bureau of the Census, *Statistical Abstract of the United States 1994* 59 (114th ed. 1994). More specifically, 1990 census data for the City of Edmonds indicate an average of only 2.41 persons per household. *See* Pet. Br. 29.

Neither the fact that the City of Edmonds could have chosen a different cut-off point (*e.g.*, four or six unrelated persons, rather than five), nor the fact that the line drawn may be in some instances underinclusive or overinclusive in achieving the City's purposes, diminishes the reasonableness of its judgment. In *Belle Terre*, the Court rejected just such an argument:

> It is said, however, that if two unmarried people can constitute a "family," there is no reason why three or four may not. But every line drawn by a legislature leaves some out that might well have been included. That exercise of discretion is, however, a legislative, not a judicial, function.

416 U.S. at 8 (footnote omitted).

In sum, the statutory exemption does not require that maximum occupancy requirements be perfectly suited to their objectives or shown to be the optimal policy choice. The requirements need only be reasonable. The Edmonds occupancy requirement, which it has found necessary to effectuate its single-family zoning decisions, easily meets that test.

Because the Edmonds ordinance is a "reasonable" restriction "regarding the maximum number of occupants permitted to occupy a dwelling," 42 U.S.C. § 3607(b)(1), the Court's inquiry is properly at its end. The Edmonds ordinance is exempt from the FHAA.

II. NOTHING IN THE LEGISLATIVE HISTORY OF THE FHAA REQUIRES THAT § 3607(b)(1) BE CONSTRUED IN A MANNER CONTRARY TO ITS PLAIN LANGUAGE

Even if legislative history is considered, the statutory exemption should still be held to apply to the Edmonds ordinance. As noted earlier, the court of appeals relied heavily on its reading of the legislative history of the FHAA to justify its interpretation of § 3607(b)(1). Not only is a reading of the legislative history unnecessary because the statutory language of the exemption is clear, there is nothing in the legislative history that would compel a result contrary to the language of the statute.[8] Just last Term, in *NLRB v. Health Care & Retirement Corp.*, 114 S.Ct. 1778 (1994), the Court rejected as follows arguments based on a committee report:

> "[I]t is the function of the courts and not the Legislature, much less a Committee of one House of the Legislature, to say what an enacted statute means." . . . [Isolated] statements [from a committee report] do not have "the force of law, for the Constitution is quite explicit about the procedure that Congress must follow in legislating."

Id. at 1784-85 (citations omitted).

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[8] This case should be resolved solely by reference to the plain meaning of § 3607(b)(1). *Amici* discuss the legislative history of the FHAA only because the court of appeals relied on that history in reversing the district court, and because *amici* anticipate that respondents will similarly rely on it in this Court.

In reviewing the legislative history of the FHAA, the court of appeals relied principally on a single paragraph in a report by the House Judiciary Committee. *See* Pet. App. 18a-20a. The paragraph reads in full:

> [Section 3607(b)(1)] amends section 807 [of the FHA] to make additional exemptions relating to the familial status provisions. These provisions are not intended to limit the applicability of any reasonable local, State or Federal restrictions on the maximum number of occupants permitted to occupy a dwelling unit. A number of jurisdictions limit the number of occupants per unit based on a minimum number of square feet in the unit or the sleeping areas of the unit. Reasonable limitations by governments would be allowed to continue, as long as they were applied to all occupants, and did not operate to discriminate on the basis of race, color, religion, sex, national origin, handicap or familial status.

H.R. Rep. No. 711, 100th Cong., 2d Sess., *reprinted in* 1988 U.S.C.C.A.N. 2173, 2192.

This paragraph from the House Committee Report does not require this Court to ignore the plain meaning of § 3607(b)(1). Indeed, the second sentence of the paragraph fully supports the plain language reading. The sentence reiterates the application of the exemption to "any" reasonable restriction on maximum occupancy, and goes on to emphasize that the exemption applies to restrictions that limit occupancy by "dwelling unit." As does the similar language of § 3607(b)(1), the language of this passage thus emphasizes the relevance of the exemption to restrictions by dwelling unit rather than solely to "per square foot" restrictions. Moreover, the breadth of this sentence indicates that the examples of exempt restrictions set forth in the third sentence are merely that—examples of some restrictions that might be held to be reasonable under § 3607(b)(1). *See Elliott*, 960 F.2d at 980. The court of appeals nonetheless viewed these examples of exempted restrictions as an exclusive statement of the entire reach of the exemption. Such over-reliance on examples from legislative history was condemned by this Court in *Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 649 (1990):

> Moreover, and more generally, the language of a statute—particularly language expressly granting an agency broad authority—is not to be regarded as modified by examples set forth in the legislative history. An example, after all, is just that: an illustration of a statute's operation in practice. It is not, as the Court of Appeals apparently thought, a definitive interpretation of a statute's scope.

While statutes should be read carefully and with an eye toward fine distinctions, legislative history is valuable primarily when it makes a clear statement of the intended meaning of an otherwise unclear provision. The court of appeals erred by reading legislative history as though language in a committee report was the statute itself, with the canons of construction to be applied to that report, instead of being used to illuminate the statute.

The court of appeals linked its reading of the legislative history primarily to the last sentence of this paragraph, excluding the Edmonds ordinance from the protective force of the exemption because it does not apply to "all occupants". *See* Pet. App. 28a. In effect, the court of appeals used this phrase to read a type of "no exceptions" rule into the exemption, whereby restrictions that provided special treatment

for any class of residents were excluded. Not only is there no support in the language of § 3607(b)(1) for such a reading, the clause immediately following the phrase "all occupants" demonstrates that the concern was not whether the restriction on maximum occupancy had any exceptions, but rather whether the restriction discriminated specifically against a protected group. Because the ordinance does not discriminate against a protected group, it does not run afoul of this passage.

In this regard, it should be noted that the reference to discrimination contained in the last sentence of the paragraph on page 31 of the House Report, *see* 1988 U.S.C.C.A.N. at 2192, cannot logically be read to incorporate the substantive meaning given the term "discrimination" in the FHAA itself. If the only maximum occupancy restrictions that qualified for exemption under § 3607(b)(1) were those that passed review under the substantive provisions of the FHAA (*i.e.*, those that did not "discriminate" under the FHAA), the exemption would serve no purpose at all. A government entity seeking to defend a maximum occupancy restriction against an FHAA claim would have to defend that restriction as if § 3607(b)(1) did not even exist. Because Congress is presumed not to draft meaningless statutes, this reading of § 3607(b)(1) is presumptively incorrect.[9]

[9] The contrary argument was made by Judge Kravitch in her dissent in *Elliott*. Judge Kravitch argued that "reasonableness" under § 3607(b)(1) depended upon whether the protected individuals had been provided "reasonable accommodation" as that term is defined in the FHAA. *Elliott*, 960 F.2d at 986-88 (Kravitch, J., dissenting). In other words, the application of the exemption was contingent on whether a substantive standard of the FHAA had been violated. The *Elliott* majority correctly pointed out the circularity of this reasoning: "[U]nder the dissent's construction, the only time the exemption could apply is when there is no statutory violation in the first place," thereby rendering the exemption a nullity. *Id.* at 984 n.12.

A far more plausible reading of the use of "discrimination" in the last sentence in the paragraph on page 32 of the House Report is to clarify that facially discriminatory zoning practices like the one struck down by this Court in *City of Cleburne v. Cleburne Living Center*, 473 U.S. 435 (1985) remain impermissible.[10] A restriction like that in *Cleburne*, which applied onerous permit requirements to group homes for the disabled but did not apply those same requirements to group homes of similar size for non-disabled persons, would be prohibited even if it otherwise involved the maximum occupancy of a dwelling.[11] Because the Edmonds ordinance is facially neutral,[12] this concern is not applicable here.

[10] Thus, the reference to discrimination can be read as an acknowledgment of the constitutional limitations that exist independent of FHAA's substantive provisions. By noting these limitations, the passage reinforces that even the exception to the FHAA cannot be applied in a facially discriminatory manner.

[11] In *Cleburne*, the City of Cleburne required that special use permits be obtained for the operation of " '[h]ospitals for the insane or feeble-minded, or alcoholic [sic] or drug addicts, or penal or correctional institutions,' " 473 U.S. at 436 (quoting Section 16 of the Cleburne zoning ordinance), but did not require such permits for the maintenance of boarding houses or other types of hospitals. *Id.* This Court held that such differential treatment was not rationally related to a legitimate governmental interest and therefore offended the Equal Protection Clause of the Fourteenth Amendment. *Id.* at 448-50.

[12] Even the court of appeals recognized the facial neutrality of the Edmonds ordinance. *See* Pet. App. 23a n.5. ("Ed-

The court of appeals also based its holding on certain broad language in the House Report that discusses the aims of the FHAA generally. *See* Pet. App. 20a-24a (discussing passages from page 24 of the House Report, 1988 U.S.C.C.A.N. at 2185). Not only do these passages of the House Report plainly fail to discuss the scope of § 3607(b)(1), they do not support the proposition that the Edmonds ordinance should be excluded from that scope. A careful reading of the passages cited by the court of appeals reveals that they merely suggest that the FHAA applies generally to zoning decisions and practices, and affirm that discriminatory practices like those condemned by this Court in *Cleburne* are within the scope of the statute.

Because this case poses only the question of whether Congress specifically exempted a certain category of zoning restrictions from FHAA review, the view that the FHAA applies generally to zoning decisions and practices, *see* H.R. Rep. No. 711, at 24, 1988 U.S.C.C.A.N. at 2185 ("[t]he Committee intends that the prohibition against discrimination against those with handicaps apply to zoning decisions and practices"), is not relevant. The application of the FHAA to zoning decisions and practices is a presupposition of this litigation, not a justification for narrowing the plain language of the exemption. Statements in the House Report about the general application of the FHAA to zoning decisions and practices thus have no bearing on this case except to highlight the reason why the scope of the exemption contained in § 3607(b)(1) is of significance.[18]

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monds' ordinance is facially neutral because it treats handicapped and non-handicapped persons similarly.").

[18] Language indicating that the substantive provisions of the FHAA may include claims of disparate impact, *see* H.R. Rep. No. 711, at 24, 1988 U.S.C.C.A.N. at 2185 ("[a]nother method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates against people with disabilities"), is similarly irrelevant to the scope of § 3607(b)(1). The question before the Court is not whether, as a general matter, disparate impact analysis is permissible under the FHAA, rather it is whether the Edmonds ordinance should be exempt from such analysis in the first place. Thus, a conclusion that claims of disparate impact are generally cognizable under the FHAA says nothing about the scope of § 3607(b)(1).

The case against the plain language of the exemption also cannot be bolstered by the statement in the Report that the FHAA is "intended to prohibit the application of special requirements through land-use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community." *Id.* Congress could hardly have meant that groups of handicapped individuals have the right to live wherever they choose under all circumstances; instead, this language merely underscores Congress' intention that the FHAA apply to discriminatory restrictions like the one struck down by this Court in *Cleburne*, *supra*.

The relationship of *Cleburne* to the House Report is clear. Not only does the House Report cite *Cleburne* twice in the passages discussing the general purposes of the FHAA, *see* H.R. Rep. No. 711 at 24, 1988 U.S.C.C.A.N. at 2185, its description of the evil addressed by the FHAA closely tracks the facts of *Cleburne*. The language quoted above is illustrative in this respect. Similarly, the Report notes that discrimination "has been accomplished by such means as the enactment or imposition of health, safety or

land-use requirements on congregate living arrangements among non-related persons with disabilities. Since these requirements are not imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities." *Id.* These passages bear a close resemblance to the type of discrimination held unconstitutional in *Cleburne* and thus do no more than affirm the general applicability of the FHAA to intentional discrimination against the disabled; they do nothing to limit the meaning of the plain language of § 3607(b)(1).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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